

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NATIONWIDE LIFE INSURANCE COMPANY,
a foreign corporation,

Plaintiff,

vs.

Case No. 11-cv-12422-AC-MKM
Hon. Avern Cohn

WILLIAM KEENE, JENNIFER KEENE,
MONICA LYNNE LUPILOFF, NICOLE RENEE
LUPILOFF and NICOLE RENEE LUPILOFF,
PERSONAL REPRESENTATIVE OF THE ESTATE
OF GARY LUPILOFF, DECEASED,

Defendants.

Michael F. Schmidt P25213
Attorneys for Plaintiff
1050 Wilshire Drive, Suite 320
Troy, MI 48084
(248)649-7800

Albert L. Holtz P15088
Attorney for Monica Lupiloff, Nicole Lupiloff
and Nicole Lupiloff, Per Rep of the Estate of
Gary Lupiloff, Deceased
3910 Telegraph Road, Suite 200
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(248)593-5000

John H. Bredell P36577
Attorney for William & Jennifer Keene
119 N. Huron Street
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**ANSWER BY PLAINTIFF AND COUNTER-DEFENDANT
NATIONWIDE LIFE INSURANCE COMPANY TO COUNTERCLAIM FILED BY
DEFENDANTS AND COUNTER-PLAINTIFFS MONICA LYNNE LUPILOFF,
NICOLE RENEE LUPILOFF AND NICOLE RENEE LUPILOFF AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF GARY LUPILOFF, DECEASED**

SPECIAL AND/OR AFFIRMATIVE DEFENSES

DEMAND FOR JURY TRIAL

HARVEY KRUSE
ATTORNEYS & COUNSELORS A PROFESSIONAL CORPORATION
1050 WILSHIRE DRIVE, SUITE 320, TROY, MICHIGAN 48084-1526 248-649-7800

NOW COMES the plaintiff and counter-defendant, Nationwide Life Insurance Company (hereinafter "Nationwide"), by and through its attorneys Harvey Kruse, P.C., and for its answer to the counterclaim filed by the defendants and counter-plaintiffs Monica Lynn Lupiloff, Nicole Renee Lupiloff and Nicole Renee Lupiloff as Personal Representative of the Estate of Gary Lupiloff, Deceased, states as follows:

GENERAL ALLEGATIONS

1. No contest.
2. No contest.
3. Nationwide issued a life insurance policy, Policy Number L034804300 (hereinafter referred to as the "Policy") insuring the life of Gary H. Lupiloff on 11/28/03 with an initial face amount of \$500,000 and listing Gary H. Lupiloff as the "Owner" of the policy, William Keene/ATIMA as the beneficiary and Monica Lynn Lupiloff and Nicole Renee Lupiloff as contingent beneficiaries, a copy of the policy was attached to Nationwide's complaint for interpleader and declaratory relief as Exhibit A, and any allegations contained in paragraph 3 to the contrary are denied for the reason they are untrue and contrary to the facts.

4. It is admitted that the Policy was in force on 7/13/10, and Nationwide is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 4.

5. No contest.

6. That Nationwide admits that on or about 6/11/04 Nationwide received a change of beneficiary form signed by Gary H. Lupiloff on 4/4/07 which designated William Keene as the primary beneficiary and Jennifer Keene, wife of William Keene, as contingent beneficiary and a change of ownership form signed by Gary H. Lupiloff on 4/4/07 changing the Owner of the policy from Gary H. Lupiloff to William Keene designated as "Business Relationship On File",

and is without information or knowledge sufficient to form a belief in regard to any coercion and fraud, and denies the remaining allegations contained in paragraph 6 because same are untrue and contrary to the facts.

7. That Nationwide is without information or knowledge sufficient to form a belief regarding any forgery and denies the remaining allegations contained in paragraph 7 as they apply to Nationwide because same are untrue and contrary to the facts.

8. That Nationwide is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 8.

9. That Nationwide is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 9.

10. That Nationwide is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 10.

11. That Nationwide is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 11.

12. That Nationwide denies the allegations contained in paragraph 12 as same pertain or apply to Nationwide, and is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 12.

13. That Nationwide is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 13.

14. That Nationwide is without information or knowledge whether Jennifer Keene or William Keene should be barred from recovering under the policy but denies the remaining allegations contained in paragraph 14 because same are untrue and contrary to the facts and are an incorrect statement of the law.

15. The allegations contained in Nationwide's complaint for interpleader and declaratory relief speak for themselves and Nationwide denies the remaining allegations contained in paragraph 15 because same are untrue and contrary to the facts.

COUNT I - TORT

16. That Nationwide repeats and realleges the answers made to every allegation contained in the counterclaim as though set forth fully herein.

17. That Nationwide denies the allegations contained in paragraph 17 because same are untrue and contrary to the facts and are an incorrect statement of the law.

WHEREFORE, Nationwide prays for a judgment of no cause of action as to any and all claims made in the counterclaim, together with costs and attorney fees so wrongfully incurred.

COUNT II - CONTRACT

18. That Nationwide repeats and realleges the answers made to every allegation contained in the counterclaim as though set forth fully herein.

19. That Nationwide denies allegations contained in paragraph 19 because same are untrue and contrary to the facts and are an incorrect statement of the law.

20. That Nationwide denies allegations contained in paragraph 20 because same are untrue and contrary to the facts and are an incorrect statement of the law.

21. That Nationwide denies allegations contained in paragraph 21 because same are untrue and contrary to the facts and are an incorrect statement of the law.

WHEREFORE, Nationwide prays for a judgment of no cause of action as to any and all claims made in the counterclaim, together with costs and attorney fees so wrongfully incurred.

Respectfully submitted,
HARVEY KRUSE, P.C.

BY: /s/Michael F. Schmidt
Michael F. Schmidt (P25213)
1050 Wilshire Dr., Suite 320
Troy, Michigan 48084-1526
(248) 649-7800

DATED: July 7, 2011

DEMAND FOR JURY TRIAL

NOW COMES the plaintiff and counter-defendant, Nationwide Life Insurance Company, by and through its attorneys HARVEY KRUSE, P.C. and hereby demands a trial by jury.

Respectfully submitted,
HARVEY KRUSE, P.C.

BY: /s/Michael F. Schmidt
Michael F. Schmidt P25213
1050 Wilshire Drive, Suite 320
Troy, Michigan 48084-1526
(248) 649-7800

DATED: July 7, 2011

SPECIAL AND/OR AFFIRMATIVE DEFENSES

NOW COMES the plaintiff and counter-defendant Nationwide Life Insurance Company, by and through its attorneys Harvey Kruse, P.C., and for its special and/or affirmative defenses states as follows:

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1. The counterclaim fails to state a claim or cause of action upon which relief can be granted.
2. That the counterclaim has been filed in violation of FRCP 22.
3. That the counterclaim is barred by waiver, estoppel, laches, fraud, the statute of frauds and unclean hands.
4. That the counterclaim is barred by MCL 700.2803.
5. That the counterclaim was filed in bad faith and in violation of FRCP 11 subjecting the counter-plaintiffs and their attorney to sanctions.
6. That the counterclaim is barred by the negligence, contributory negligence and comparative negligence of the counter-plaintiffs proximately resulting in their own alleged injuries and damages.
7. That Nationwide owed no duties to the counter-plaintiffs as a matter of law and the counterclaim fails to state a claim or cause of action.
8. That Nationwide did not breach any contract with Gary H. Lupiloff or any other party and the counter-plaintiffs have no claim for breach of contract.
9. That the counter-plaintiffs are not third party beneficiaries of any contract entered by Nationwide, including pursuant to MCL 600.1405.
10. That the counter-plaintiffs have no claim under the policy of insurance because they were eliminated as contingent beneficiaries by the change of beneficiary form signed by Gary H. Lupiloff on 4/4/07 and received by Nationwide on or about 6/11/04.
11. That Nationwide reserves the right to file additional special and/or affirmative defenses as same are disclosed by discovery in this matter.

WHEREFORE, Nationwide prays for a judgment of no cause of action as to any and all claims made in the counterclaim, together with costs and attorney fees so wrongfully incurred.

Respectfully submitted,
HARVEY KRUSE, P.C.

BY: /s/Michael F. Schmidt
Michael F. Schmidt P25213
1050 Wilshire Drive, Suite 320
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(248)649-7800

DATED: July 7, 2011

CERTIFICATE OF SERVICE

I hereby certify that Janice A. Albertson electronically filed the foregoing pleading on 7-8-11 with the Clerk of the Court via the Electronic Case Filing system which will send notice of filing to all attorneys of record.

/s/Janice A. Albertson
Secretary to Michael F. Schmidt

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